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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,596	09/12/2001	Anton Gunzinger	FREI P033US-2	8857
21121	7590	09/16/2005	EXAMINER	
OPPEDAHL AND LARSON LLP			ELLIS, RICHARD L	
P O BOX 5068			ART UNIT	
DILLON, CO 80435-5068			PAPER NUMBER	
			2183	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20050913

DATE MAILED:

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Commissioner for Patents

See attachment.

Art Unit: 2183


1. The reply brief filed on July 5, 2005 has not been considered because it is not in compliance with 37 CFR 41.41(a). 37 CFR 41.41(a)(2) states:

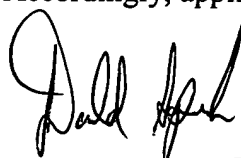
A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence.

2. The reply brief contains significant amounts of new evidence as well as a new affidavit and corresponding new arguments related to this new evidence and new affidavit. Accordingly, the reply brief fails to comply with 37 CFR 41.41(a)(2). Therefore, the reply brief has not been considered.

3. Additionally, pg. 1 of the reply brief asserts that applicant was unaware of additional materials that were attached to the advisory action mailed September 21, 2004 until after applicant's receipt of the examiner's answer mailed May 3, 2005. However, pg. 1 of the reply brief also admits that applicant received at least the first five pages of the advisory action. The fourth page of the papers applicant has admitted were received (the page numbered 2) in the first paragraph on the page makes specific reference to additional information attached to the advisory action. Therefore, applicant was appraised that there were attachments to the advisory action by the papers he admits he received and as such should have either requested the missing papers in September 2004 or accessed the image file wrapper system to obtain the missing pages in September 2004.

4. Additionally, applicant requests that the advisory action be stricken from the record, and as a consequence all portions of the examiner's answer that make reference to the advisory action be stricken from the record. A reply brief is not the proper venue to request that evidentiary material be stricken from the record of a patent application. Accordingly, applicant's request to strike the material is denied.


RICHARD L. ELLIS
PRIMARY EXAMINER


DONALD SPARKS
SUPERVISORY PATENT EXAMINER



UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. no. 09/954,596

Filed: September 12, 2001

Examiner: ELLIS, RICHARD L

Art unit: 2183

Confirmation no. 8857

Reference: FREIP033-2

REPLY

This is appellant's reply to the Examiner's Answer dated May 3, 2005.

Adding to the record after appeal

37 CFR section 41.33(d)(2) says that after the date of filing an appeal, all other affidavits or other evidence "will not be admitted" except under particular narrow circumstances. The date of filing the appeal in this case was August 26, 2004. The record for this Board ought to be the record as it stood on August 26, 2004.

On September 21, 2004, a date which is after the date of filing the appeal in this case, the Examiner mailed to the applicant a five-page document styled as an "advisory action." Nothing was attached to the five-page document when it was received by the applicant on September 23, 2004.

Now comes the Examiner's Answer which says (Answer, page 6) that extrinsic evidence was attached to that five-page document. The applicant has now (in June of 2005) consulted USPTO's Image File Wrapper and has learned that seventeen extra pages were included in the materials scanned by USPTO into Image File Wrapper for the September 21, 2004 document. Now in June of 2005, the applicant has for the first time seen the seventeen pages to which the Examiner refers.

In any event, even if the Examiner had mailed the seventeen pages to the applicant back

Not considered - does not comply with 37 CFR 41.41(a)(2)
Do not enter - RUE - 9/13/2005